

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.**

In the Matter of:	)	
	)	
Request for Waiver	)	
	)	CC Docket No. 02-6
by	)	
	)	
Ashtabula Area City School District	)	
Ashtabula, OH	)	

TO: Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street, SW  
Washington, DC 20554

Ashtabula Area City Schools ("Ashtabula") respectfully requests that the Federal Communications Commission ("FCC") grant it a Waiver for late filing of Item 21 Attachments relative to Form 471 Application #831006. This Request for Waiver is made pursuant to 54.719 through 54.723 of the Commission's rules.<sup>1</sup>

**Basic Information:**

Billed Entity Number:	129401
FCC Form 471 Application Numbers:	831006
Funding Request Numbers Appealed:	2355654, 2355659, 2355714, 2356633 and 2357161
Date of Funding Commitment Decision Letter:	October 16, 2012

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<sup>1</sup> 47 C.F.R. §§ 54.719–54.723

Date of Administrator's Decision On Appeal Letter:

December 6, 2012

**Contact Information:**

Steve Kaplan  
Educational Funding Group, Inc.  
CRN 16043587  
Consultant to Ashtabula Area City Schools  
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**REASONS FOR REQUEST FOR WAIVER:**

Ashtabula Area City Schools is seeking a Waiver relative to a series of computer/clerical/ministerial errors that resulted in the out-of-Window submission of five (5) of twelve (12) Item 21 Attachments for Application #831006. The issue was appealed to USAC, which appeal was denied in an Administrator's Decision on Appeal Letter dated December 6, 2012. It is from USAC's denial that this Request for Waiver is sought.

The Administrator's Decision on Appeal explanation supporting USAC's denial of the appeal was as follows:

- USAC denied your funding requests because it was determined that your Item 21 Attachment was not received on or before the filing deadline of May 9, 2012. Program rules require that Forms 471, including the certification and the Item 21 Attachments must be received or postmarked by the close of the FCC Form 471 application filing window. On April 19, 2012, USAC informed you that your Item 21 Attachment was missing and allowed you until May 9, 2012 to submit the Item 21 Attachment. You have failed to demonstrate that your Item 21 Attachment was submitted within the time prescribed. Consequently, your appeal is denied.

- The FCC requires completed FCC Form 471 applications and certifications to be postmarked by the final date of the filing window for the relevant funding year for the application in order to be considered timely filed. See Request for Review by Alpine County Unified School District, et al., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., File no. NEC.471.01-24-00.5400004, CC Docket Nos. 96-45 and 97-21, Order, DA02-75 paras. 2 and 4 (rel. Jan. 14, 2002). Further, the applicants must submit Item 21 Attachments to their FCC Forms 471 before the filing window deadline or their applications will be considered out of window. See In the Matter of Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Order, DA 11-88 pwa.4 (rel. Jan. 14, 2011). Beginning with funding year 2011, when USAC determines that an application lacks an Item 21 Attachment, USAC will treat the missing Attachment as it treats a missing certification. USAC will inform the applicant promptly in writing of the omission and give it 15 calendar days from receipt of that notice to submit the missing Item 21 Attachments. If applicants do not provide timely responses to USAC requests for omitted Item 21 Attachments, USAC should treat the associated applications as out of window for the purposes of meeting the filing window deadline. See id., para. 5.

### **Summary:**

Ashtabula Area City Schools is a school district located in Northeastern Ohio. The district consists of slightly more than 3500 students, 80% of whom receive free and reduced meals. This significant level of poverty qualifies Ashtabula for a district-wide 90% percent discount level under the E-rate Program; the district relies heavily on this funding to help provide its students with much needed telecommunications and technology services. For the past five years Ashtabula has employed Educational Funding Group, Inc. as its E-rate consultant. ("EFG") (CRN 16043587) EFG's Letter of Agency is attached as Exhibit A.

In accordance with E-rate Funding Year 2012 instructions, on March 20, 2012 EFG emailed a PDF file with Ashtabula's Item 21 Attachments for Application #831006 to

*attachments@sl.universalservice.org*. However, after receiving funding denials, what the Ashtabula/EFG later came to learn was that on March 20, 2012 at approximately 6:53PM, when the file containing the Item 21 Attachments for Application #831006 was emailed to the SLD, a previously undetected error caused only seven of the twelve Attachments for that Application to actually be submitted.

### **Statement in Support of Waiver**

EFG's Item 21 procedure for Application #831006 started during the week of March 12, 2012 when Ashtabula's account application-specific information was entered into the EFG Item 21 Attachment system. This was done by means of a program that drew the Block 5 information down from the already-created FCC Form 471 #831006 on the SLD's website and entered it directly into EFG's Item 21 system. The program took the downloaded information from EFG's system and created an Item 21 Attachment for each FRN contained in the application. On March 20, 2012, to enable the Item 21 Attachments to be emailed to the SLD, the information was first printed from the Item 21 Attachment system to a PDF file.

EFG's Item 21 Attachment system automatically generates filenames which include the application number as well as a suffix indicating how many Item 21 Attachments are contained in that file. As can be seen from the screen shot of EFG's server, attached as Exhibit B, the file name, *Ashtabula 129401 fy2012 Oh I21 Att **471=831006**(TC,IA) ID=ASHTABULA YR 15 471 **FRNs=12**.pdf* for Application #831006 indicated to the EFG staff member that the Item 21 system had included Attachments for twelve FRNs.

Not having been able to reconcile its records with the funding denials received in USAC Funding Commitment Decision Letter dated November 20, 2012, EFG undertook an in-depth

review of its records. What came to light was that there had been a software malfunction on March 20, 2012 that turned out to be the underlying cause for five of the Item 21 Attachments, although timely created, not being submitted to USAC within the Window. Rooted in the original error, subsequent undetected clerical/ministerial errors followed from March 20 through October 2012, when the original and ensuing series of errors finally came to light.

### **Summary of Errors**

1. Computer Software Malfunction: There was an undetected bug in EFG's automated PDF creation system which caused the PDF sent on March 20, 2012 to be truncated. The bug was what caused the last five of the twelve Item 21 Attachments for Application #831006 not to print from EFG's Item 21 system to the PDF file that was sent to the SLD. This extremely unusual circumstance wasn't discovered until October 2012 incidental to a PIA inquiry. Since it had never encountered this problem before, in March 2012 EFG's usual clerical procedures did not include a step to review the PDF print-files created from the Item 21 system for truncation. So, although all twelve Item 21 Attachments for Application #831006 were timely created and the file suffix of the PDF emailed to the SLD on March 20, 2012 indicated there were twelve, unbeknownst to EFG, the PDF only contained seven of the twelve Item 21 Attachments.
2. Clerical/Ministerial Error #1. The EFG staff member responsible for emailing the Item 21 Attachments to the SLD made a clerical/ministerial error by sending the incompletely spooled (truncated) PDF file to the SLD on March 20, 2012. This occurred because he made the assumption that the PDF file that was emailed to the SLD with the Application #831006 Item 21 Attachments was intact and contained all twelve FRNs as

indicated in the file name extension. The assumption was entirely reasonable because in Funding Years 2011 and 2012 EFG had submitted without error hundreds of similar PDFs for thousands of FRNs.

Before emailing the Item 21s for Application #831006 to the SLD the EFG staff member even took the time to compare the number of Item 21s noted in the filename suffix to the number of FRNs on Form 471 #831006; he noted that they were the same number and so sent the email with the Attachments to the SLD.

3. Clerical/Ministerial Error #2. A few weeks later EFG received by postal mail a USAC Urgent Reminder dated April 19, 2012. The Reminder stated that Item 21 Attachments for Application #831006 had to be sent to the SLD by May 9, 2012. The Reminder was generic, only referenced Application #831006 as a whole, didn't reference FRN numbers and never specifically stated that any of the Item 21 Attachments for the Application were missing. The only thing the Urgent Reminder Notice said was that it was a reminder that Item 21 Attachments for Application #831006 had to be received by USAC by May 9, 2012.

When the EFG staff member received the Reminder he re-checked EFG's records for Application #831006 and found the March 20, 2012 email message indicating that Item 21 Attachments for twelve FRNs had been sent. Believing they had been timely submitted on March 20, 2012, and not knowing why USAC sent a Reminder, he nonetheless figured he'd 'play it safe' and on April 20, 2012 sent them again, but did so without opening the file and so re-sent *the same*[truncated] PDF file. It is apparent that by sending the same file he continued under the mistaken belief that

it contained all twelve FRNs that had been created in EFG's Item 21 system before the Window closing deadline. His clerical/ministerial error was that before sending the file to the SLD he failed to open it and verify it contained all twelve Item 21 Attachments. This resulted in the incomplete PDF file being sent to the SLD a second time.

4. Clerical/Ministerial Error #3. On April 23, 2012, while reviewing Application #831006 file, the same EFG staff member went into EFG's Item 21 system and made minor changes to the Description columns of a few of the twelve Item 21s. (This was done to correct a few typos and clarify a few descriptions in anticipation of PIA questions.) Since the corrections were made directly into EFG's Item 21 system, a new PDF print copy was saved to the Ashtabula FY2012 folder on the EFG server. This file was titled *"Revised on 23 APR 2012 Ashtabula 129401 fy2012 Oh I21 Att 471=831006(TC,IA) ID=ASHTABULA YR 15 471 FRNs=12.pdf."* This revised version had spooled properly and, in fact, contained all twelve Item 21 Attachments. However, still believing the file sent a few days earlier on April 20, 2012 contained all twelve Item 21s, the revised file was not sent to the SLD but saved on the EFG server for use in PIA. Again, his continued mistaken belief, together with neglecting to open and review the original PDF prior to sending it on April 20<sup>th</sup>, constituted Clerical/Ministerial Error(s) #3. (Refer to Exhibit B which shows the creation dates of both the 'original' and 'revised' Item 21 Attachments.)

5. Clerical/Ministerial Error #4 (Unfortunately). In August 2012, even after PIA Reviewer Ian Starker asked for proof of timely Item 21 submissions for FRNs 2355654, 2355659, 2355714, 2356633 and 2357161, continuing under the belief that both prior

submissions contained Item 21 Attachments for all twelve FRNs, the EFG staff member never realized the Item 21 submissions for those five FRNs had not previously been sent to USAC.

Mr. Starker's Question III. stated: "You were previously informed that your Item 21 Attachment(s) for FY2012 FCC Form application #831006, FRN(s) 2355654, 2355659, 2355714, 2356633 & 2357161 were not received." Contrary to the Question, EFG/Ashtabula *never* received anything from USAC stating that those specific Item 21s were not received by the SLD. The only thing it had ever received was the generic USAC Urgent Reminder to which it had responded despite believing in good faith that its original March 20, 2012 Item 21 submission had been complete. In August 2012, still believing all twelve Item 21s had been submitted both in March and again in April, EFG responded to Mr. Starker by sending the more current "revised" file created on April 23, 2012. As previously stated, this file was complete and contained all twelve Item 21 Attachments. Since the EFG staff member *still* hadn't realized that the original Item 21 Attachments PDF file had been truncated, his PIA response stated: **"All of our Item 21 Attachments (including those for the above cited FRNs) and documentation that they were originally sent on MAR 20, 2012 are included with this message."** [the "documentation that they were originally sent..." was a copy of his email of March 20, 2012 to attachments@sl.universalservice.org]. He sent Mr. Starker the "revised" version under the continued belief that, for primary purposes, it was the same as the previously sent files.



The clerical/ministerial error made at this time was not realizing that the “revised” file he attached in August 2012 contained all twelve Item 21 Attachments. This was because he still hadn’t realized it was different from the truncated one he had sent on March 20 and again on April 20, 2012. Obviously submitting the complete file of twelve Item 21 Attachments in his August 24, 2012 PIA response when only seven had been submitted previously served to further compound the EFG staff member’s previous clerical/ministerial errors. Nonetheless, as of that date all twelve Item 21 Attachments were in USAC’s possession.

No further mention of the purportedly missing Attachments was made until a subsequent PIA review from David Lagan dated October 5, 2012. EFG only first became aware that five of the Item 21 Attachments had not been received by the SLD within the Window when it received this PIA inquiry. At that time, when the issue was raised yet again, the EFG staff member looked into EFG’s records and the procedures that had been used on March 20, 2012. It was then, for the very first time that it came to light that five of the twelve Item 21s for Application #831006 had not spooled to the PDF print file created with PDF Factory Pro.

## **CONCLUSION**

Throughout its application process Ashtabula demonstrated actual and/or attempted compliance with E-rate program rules and regulations. It submitted its FCC Form 471 Application #831006 within the Window and always intended to have all twelve Item 21 Attachments for Application #831006 submitted in a timely manner. It followed all core E-rate program requirements and committed no fraud, abuse or waste of E-rate funds.

The facts make it apparent that (1) the Item 21 Attachments for the five 'missing' FRNs were created before the close of the Form 471 filing Window; (2) on March 20, 2012, Ashtabula made a good faith effort to submit those five along with the other seven it submitted for its Priority One Application and the two it submitted for its Priority Two Application; and (3) until October 2012, it was believed that the five 'missing' Item 21 Attachments had been timely submitted. The facts also show that a computer glitch followed by four separate though related, clerical/ministerial errors caused those five Item 21 Attachments not to be filed in a timely manner. The clerical/ministerial errors that were made were perhaps careless, but were unintentional and can be traced back to the faulty spooling of data that resulted in a truncated Item 21 Attachment PDF file that had been timely created within the Window. The very nature of the original error allowed it to go unnoticed until past the filing deadline for Item 21 Attachments and resulted in funding denials for the five FRNs subject of this appeal.

The Commission has repeatedly reiterated its authority under 47 C.F.R. §1.3 to waive rules for good cause shown and has routinely waived compliance for violations when the record contains no evidence of intent to defraud or abuse the E-rate program and where the public interest is better serviced by granting a waiver:

The Commission may waive any provision of its rules on its own motion and for good cause shown. A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule. (footnotes omitted)<sup>2</sup>

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<sup>2</sup> See *Request For Review of Decision of the Universal Service Administrator by Bishop Perry Middle School*, , DA No. 06-54; *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

Further, in its recent Orders, DA 12-1482, DA 12-1998 and DA-2057, Waivers were granted to applicants whose applications were submitted within the filing Window and who, like Ashtabula, demonstrated good reasons why their Item 21 Attachments were not submitted until after the Window closed.

Therefore, for good cause shown, and to better serve the public interest and the interests of the students of Ashtabula Area City Schools, Ashtabula respectfully requests the Commission:

1. Waive its requirement that the Item 21 Attachments for FRNs 2355654, 2355659, 2355714, 2356633 and 2357161 be submitted by the Funding Year 2012 FCC Form 471 filing deadline;
2. Allow the Item 21 Attachments for FRNs 2355654, 2355659, 2355714, 2356633 and 2357161, which were submitted to PIA in August 2012, be accepted by USAC as though filed within the Window;
3. Direct USAC to issue funding commitments for FRNs 2355654, 2355659, 2355714, 2356633 and 2357161; and
4. Direct USAC to issue a Revised Funding Commitment Decision Letter awarding funding for those FRNs.

Thank you for your consideration.

/s/ Steve Kaplan

Steve Kaplan  
Vice President  
Educational Funding Group, Inc.  
E-rate Consultant to Ashtabula Area Schools

# Exhibit A



www.aaccs.net

# ASHTABULA AREA CITY SCHOOLS

401 West 44th Street • P.O. Box 290, Ashtabula, Ohio 44005-0290 • Phone: (440) 993-2500

## Board of Education

Steve J. Candela • Alfred R. DeCato, MD • James A. Hudson • Christine Seuffert • Janine Trebuchon-Wertz

To: Schools and Libraries Division of the  
Universal Service Administrative Company

Re: Letter of Agency for Funding Years\*:

July 1, 2011 – June 30, 2012 ☒

July 1, 2012 – June 30, 2013 ☒

July 1, 2013 – June 30, 2014 ☒

\*Please check all applicable year(s)

The undersigned, on behalf of Ashtabula City Schools, hereby authorizes the personnel and authorized agents of Educational Funding Group, Inc., ("EFG") to act as our Agent(s) with the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) regarding all matters involving our E-rate funding application(s) for the Funding Years checked above.

This authorization relates to the filing of FCC Form 470, FCC Form 471 and all other E-rate forms necessary to complete each year's funding process. This authorization further extends to all other phases of the application process, including, but not limited to, responding to Program Integrity Review inquiries and the filing of appeals. EFG personnel and agents are expressly authorized to access and discuss with the SLD all matters pertaining to our E-rate application(s) and forms for the above-checked Funding Years.

This authorization shall remain in full force and effect until all work associated with the Funding Year(s) checked above has been completed.

Ashtabula Area City Schools

  
Signature

Date: August 25, 2010

William W. Hill  
Printed Name

Treasurer/CFO  
Title

**Superintendent:** Joseph F. Donatone  
Phone: (440) 993-2501 • FAX: (440) 993-2626  
E-mail: joseph.donatone@neomin.org

**Treasurer:** William W. Hill  
Phone: (440) 993-2504 • FAX: (440) 992-6389  
E-mail: william.hill@neomin.org

*We are an equal opportunity employer who fully and actively supports equal access for all people, regardless of Race, Color, Religion, Gender, Age, Sexual Orientation, National Origin or Disability.*

## Exhibit B

I21 Att

Computer > AllRead (\\server02) (S:) > YR 15 all schools\_2012 > Ashtabula 129401 fy2012 Oh > I21 Att

File Edit View Tools Help

Organize New folder

☆ Favorites

- Desktop
- Downloads
- Recent Place

Desktop

- Libraries
- Bob Berke
- Computer
- Windows7
- Partition 2
- New Volum
- Lenovo\_Re

Name	Date modified *	Size	
Ashtabula 129401 fy2012 Oh I21 Att 471=831006(TC,IA) ID=ASHTABULA YR 15 471 FRNs=12.pdf	3/20/2012 6:51 PM	23 KB	←
Ashtabula 129401 fy2012 Oh I21 Att 471=837948(BM,IC) ID=ASHTABULA YR 15 471 #2 FRNs=2.pdf	3/20/2012 7:04 PM	10 KB	
Revised on 23 APR 2012 Ashtabula 129401 fy2012 Oh I21 Att 471=831006(TC,IA) ID=ASHTABULA YR 15 471 FRNs=12.pdf	4/23/2012 3:17 PM	35 KB	←
Previously Sent Item 21 Attachments.pdf	8/14/2012 8:23 AM	79 KB	
REPRINT Ashtabula 129401 fy2013 Oh I21 Att 471=831006(TC,IA) ID=ASHTABULA YR 15 471 FRNs=12.pdf	8/14/2012 8:31 AM	35 KB	
Reprint Previously Sent Item 21 Attachments.pdf	8/14/2012 8:32 AM	58 KB	
I-21 Screenshot 10-05-2012.doc	10/5/2012 3:58 PM	97 KB	
Ashtabula FY15 I-21 Reminder Letter.pdf	10/24/2012 3:41 PM	59 KB	

SCREENSHOT FROM EFG SERVER